



February 2, 2017

The Honorable Donnie Tuck, Mayor
Members of City Council
City Hall
22 Lincoln Street
Hampton, VA 23669

Re: FY 17 Mid-Year Report

Dear Mayor Tuck and Members of City Council:

It is hard to believe that February 18, 2017 will mark three years of tenure as your City Attorney. I am sincerely grateful for the honor of serving you in this capacity and I wanted to give you a midyear update similar to the one I provided February 19, 2016. The City Attorney's Office is proud to support the mission of the City by providing quality legal services to the City Council, City departments, City employees, City boards and commissions, the Commissioner of the Revenue, the Assessor of the Real Estate, the Treasurer and the Economic Development Authority. This letter serves as a Mid-Year Report for July 1, 2016 through December 31, 2016.

Introduction

The City Attorney's Office continues to enjoy a reputation among the departments and the Constitutional Officers for providing quality legal services. Customer surveys provided by the departments we serve have been overwhelmingly complimentary of our attorneys and the office in general. Our litigators can be seen in court trying cases every day. Our development and finance lawyers are manning EDA, Planning Commission, BZA, and FADA meetings as well as over a dozen sub-committees and advisory committees appointed by Council. Moreover, they continue to work hand in hand with our Constitutional Officers. The team structure has been very beneficial to us and our clients and I would like to take the time to summarize some of our accomplishments these past 6 months.

Development & Finance Team

- Closed on the sale of the Motel 6 property to Hampton Lodging Associates in furtherance of the City's Hotel Initiative.

City Attorney's Office

22 Lincoln Street | Hampton, Virginia 23669
www.hampton.gov | Phone: (757) 727-6127
Fax: (757) 727-6788

- Negotiated with federal agencies on issues of great significance to our citizens, including FEMA (National Flood Insurance Program Community Assistance) and HUD (Regional Fair Share Housing Policy).
- Implemented the City's Joint Land Use Study with continued Clear Zone acquisition work and coordination with Langley Air Force Base regarding new REPI funding opportunities.
- Finalized the Dutch Dialogues contract allowing work to begin with the City's consultant team in support of the City's initiatives regarding sea level rise.
- Drafted comprehensive revisions to the City's sign ordinance to comply with significant U.S. Supreme Court case and the City's day care regulations to comply with Code of Virginia.
- Amended the City Code to create new Banquet Hall use, allowing for former downtown Post Office and other similar spaces to be used as event venues and to allow more properties to be rezoned to the Buckroe Bayfront district in order to facilitate continued redevelopment in the vicinity.
- Enforced land disturbing and/or stormwater ordinances through the issuance, execution and prosecution of 19 Notices of Violation, 4 Stop Work Orders, and 1 Injunction.
- Participated as presenters before the Local Government Attorneys of Virginia, the Virginia Bar Association, the Commissioners of the Revenue Association (Hampton Roads Region), and the Virginia Association of Local Tax Auditors.
- Represented the Commissioner of the Revenue in two administrative tax appeals. One of those matters is currently pending with Virginia's Tax Commissioner; the other matter remains under the jurisdiction of the Commissioner of the Revenue.
- Assisted the Treasurer with bankruptcy matters commencing with the receipt of a notice, including, but not limited to, the bankruptcy of multiple J Q Hammons entities (one of which owns and operates Embassy Suites).
- Represented the City in three zoning ordinance violation cases in General District Court. One was related to exceeding the maximum occupancy in a single family home, another related to Recreational Vehicle parking, and third related to a Chesapeake Bay buffer clearing violation.

The Development & Finance Team also actively represented 16 Council-appointed (or directed) boards and commissions, including the Board of Review of Real Estate Assessments, Board of Zoning Appeals, Building Code Board of Appeals, Chesapeake Bay Review Committee, Clean City Commission, Coliseum Advisory Committee, Economic Development Authority, Federal Area Development Authority, H2O Community Development Authority, Hampton Employees Retirement Systems Board, Neighborhood Commission, Peninsula Town Center Community Development Authority, Planning Commission, Purchasing & Procurement Oversight Committee, Wetlands Board, and the Parking Authority (before it was dissolved).

Litigation Team

The December 30, 2016 Litigation Report previously sent to Council provided a detailed summary of the significant litigation accomplishments achieved by the Litigation team since July 1, 2016. Other litigation accomplishments of note are:

- Drafting and implementation of a “no wake” ordinance after successfully getting new legislation enacted in the 2016 General Assembly.
- The successful defense of a Virginia Court of Appeals case seeking reversal of the termination of parental rights.
- Development and implementation of new website material and training relating to 2016 General Assembly changes to FOIA laws relating to designation of FOIA officers.
- Monitoring of recent changes in COIA laws and advising on applicability and impact of those changes.
- The dismissal of several federal cases filed against the City and Hampton employees, including police officers, based on motions filed and briefed by the City Attorney’s office.
- Continued consistent and dedicated enforcement of gateway misdemeanors to include possession of marijuana, possession with the intent to distribute, petty larceny and resisting arrest in General District Court with 180 new cases opened this period, plus existing cases being actively prosecuted.
- The handling of all misdemeanor cases in the City appealed to the Circuit Court including 48 cases opened and 23 cases closed during this time period.
- Enforcement of animal control laws through the prosecution of 38 new cases (49 total active) including show causing individuals who fail to comply with previous court orders. Extensive work on new and proposed changes to the City’s animal control ordinance and active representation of the Animal Control Advisory Committee.
- Representation of the Department of Social Services which includes 42 new cases in this time period pertaining to adult protective services matters, cases that are heard annually for the Annual Foster Care reviews, and delinquency cases in which the Department of Social Services is put on notice for possible foster care placement.

The litigation team has also succeeded in developing and presenting training opportunities for City employees that benefit the City by fostering a better understanding of the laws and potential liabilities. These trainings have been on a variety of topics including: FOIA, COIA, FLSA, FMLA, City Code, Court Procedures, Crisis Intervention, Child Protective Services, and Adult Protective Services. In addition to in-person training, attorneys working with the Police Division have provided written training bulletins to provide officers with guidance on new case law. The members of the litigation team have also presented to or written resources for outside entities including the Virginia Municipal League, Local Government Paralegals Association, Hampton Roads Fire Officer Academy, Community Services Board, and the Handbook of Virginia Local Government Law.

Cost Saving Measures

Legal Services Brought In-House

The City Attorney's Office continues to represent the Economic Development Authority (EDA) and is currently handling three cases in active litigation relating to delinquent accounts. In addition to our representation of the Economic Development Authority, the office has represented the Treasurer in judicial and non-judicial tax sales. The results of this representation have been remarkable in providing critical revenue to the City through the sale itself and getting properties back on the tax roster. Two public auctions were held since July 1, 2016. At an auction on September 15, 2016, the City of Hampton sold 12 properties, ranging from \$600.00 to \$52,500, for an average total of \$12,391.67 per property sold. At the December 15, 2016 auction, there were six properties sold for a total of \$172,300.00, an average of \$28,716.67 per property, with the highest selling for \$70,000. Approximately \$45,000 in tax dollars will be recouped. The City Attorney's office is only awarded fees by the Court if all other taxes and expenses have been reimbursed unlike when these matters were handled by outside counsel who took their fee off the top, leading to a focus on selling the higher value properties only. The City Attorney's office approach to fees has enabled more properties to be placed for sale and more revenue to come to the Treasurer. The attorneys' fees awarded by the Court from the September and December auctions are being used to offset costs of necessary computer replacements in the City Attorney's office, including for the attorney representing the Treasurer; thus, eliminating the need for the City Attorney to request additional funds from the City. The next public auction is scheduled for March 14, 2017.

Outside of the court process, there have been forty-three (43) additional properties that were previously delinquent but are now current on their taxes after the properties were turned over to the City Attorney's Office. These properties were redeemed after the taxpayer received a notice letter from the City Attorney's Office and either paid the amount in full or entered into a payment plan. In addition to these properties, there are currently nine (9) properties that are in active payment plans. These properties represent collection actions taken by the City Attorney's Office that did not involve going through the courts.

These efforts on the part of the City Attorney's office, while continuing the representation of all other City departments and divisions have saved the City thousands of dollars in outside legal fees and recovered funds for the City that were previously uncollected.

The City Attorney's office also continues to manage all Freedom of Information Act ("FOIA"), subpoena duces tecum ("SDT"), and medical records requests for all City

departments and divisions. Since July 1, 2016, the office has processed, reviewed, and responded to the following number of requests:

- FOIA – 1065
- SDT – 40
- Medical Records – 174

A rise in FOIA requests presents increased demand on the time of the two FOIA Coordinators, and on the attorneys who review each request to ensure compliance with FOIA law. The expansion of body worn cameras to the entire police patrol division has resulted in additional hours on the part of the FOIA Coordinators and attorneys. Since July 1, 2016, 41 FOIA requests have included body worn camera video and often there are multiple videos from multiple officers who responded. The City Attorney's office has addressed the increase in requests for body worn camera videos by redirecting in-house paralegal resources to train another paralegal in the office to review and redact body worn camera video.

Cost-Sharing With Other Departments

As stated in prior reports, in order to meet the demand for legal services within our budget constraints, our office arranged for cost-sharing of attorney and paralegal positions and offices resources essential to direct legal service delivery

1. 1 attorney position and 1/2 paralegal position – funded by Public Works (Stormwater Management)
2. 1 attorney position – 50% funded by Risk Management
3. 1 attorney position – 50% funded by HERS
4. 1 paralegal position – funded by Treasurer for judicial and non-judicial tax sales
5. Westlaw legal research services, PACER, and RICOH copier services – 50% funded by Risk Management

Key Service Delivery Data

The following statistics are intended to show the present cost and allocation of legal resources. We now have a comparison from midyear FY2015, midyear FY2016 and midyear FY2017. The data submitted in this report, both present and comparison data, shows that the cost for in-house legal service delivery continues to be substantially below the costs required to obtain legal services from private law firms.

In order to analyze the data, we obtained the hourly cost for the outside counsel used by the City and averaged the hourly rates. We also averaged the billing rate for the in-house staff members based on their salaries plus 40% for benefits. The average hourly rate for the city attorneys, plus 40% benefits and including my salary, is \$61.55. Last year at this time the average hourly rate was \$63.24 and the year before was at a rate of \$67.80. Minor savings continue to be accomplished by under-filling vacancies. For paralegals, the average hourly rate is \$28.68. Last year (FY 2016) at this time the average hourly rate for paralegals was \$26.07 and \$27.44 the year before. By contrast,

the average hourly rate of the outside legal counsel is \$278.65 for the attorneys and \$80.00 for their paralegals which is down from last year by \$100.00 per hour.

From July 1, 2016 through December 31, 2016, this office directly provided 11,280.22 total hours of legal service (8,207.52 in attorney hours and 3,072.70 in paralegal hours). Mid-year FY 2016 our hours were 8,599.28 (6,897.81 in attorney hours and 1,701.47 in paralegal hours). For midyear FY15 our hours were 5,782.38 total hours of legal service (4,433.03 in attorney hours and 1,349.35 in paralegal hours). There is a pattern of increase in hours of legal services provided by this office over the three fiscal year statistics which is representative of increased workloads for attorneys and paralegals, fluctuations in staff, and improved recordkeeping. The increase in hours from this time last year is 2,680.94. This number does not include hours spent completing administrative tasks, supervision of attorneys by senior attorneys, professional development, or training. It only reflects direct legal service time to clients. It is important to note that while the office has undertaken more work in several significant areas, the number of staff has not increased. In fact, the office has responded to requests for greater representation by expanding attorney and paralegal assignments in order to fully meet the needs of City departments/divisions and Council initiatives.

As shown on the attached chart, if the 11,280.22 hours in-house legal services had instead been provided by outside counsel, the cost to the City would have been \$2,532,841.45. At the in-house rate, the cost was \$593,297.90; generating \$1,939,543.55 in savings in a six month period.

This office will continue to focus on keeping total legal costs for the City low by performing as much work as possible through the utilization of our in-house attorneys and hiring outside counsel at reduced rates.

Outside Counsel

We have cut the use of outside counsel as it is always our intention to minimize the use of outside counsel wherever possible. The bulk of legal fees emanated from ongoing litigation from past fiscal years, cases involving conflicts between multiple City-related parties in litigation where the City Attorney's office represents the City and City Department and counsel in specialized areas beyond the core competency of our in-house attorneys, including intellectual property, healthcare and other benefits issues. Outside counsel fees for the July 1, 2016 through December 31, 2016 period totaled \$229,781.28. This time last year the fees were \$118,112.37. Midyear FY 2015, fees were \$218,607.24. The slight increase is due to two cases from past fiscal years going to trial. Those two cases alone generated \$106,623.69 of the \$229,781.28 in outside counsel fees reported for the last six months. Unfortunately, these two cases are continuing in that appeals have been noticed (but not yet granted) by the Supreme Court of Virginia. The office will continue to assist outside counsel to stay apprised of case status and keep costs down whenever possible.

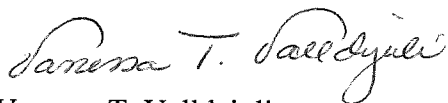
Legal Service Hours to Major Departments

Although the City Attorney's Office represents all City departments as well as its major boards and commissions, some departments consume a substantial amount of service hours which overlap team function areas. The majority of legal service hours were devoted to the Police Division (2,087.36; this time last year 2,071.80 hours), Public Works (include engineering, traffic, operations, steam plant and wastewater)(1,434.97; this time last year 594.72 hours), Social Services (1,420.40; this time last year 754.35 hours), Community Development (includes Planning, Zoning, Code Enforcement and Development Services Center, BZA, and Planning Commission) (1,027.25; this time last year 809.30 hours), Treasurer's Office (907.05 hours), Economic Development (includes the EDA) (851.55; this time last year 784.15 hours), and the Fire Division (includes Emergency Management (677.75 hours).

The City Attorney's Office continues to be committed to providing the highest quality legal service at the lowest possible costs to the Hampton taxpayers. We look forward to continuing our work supporting key City services and City Council objectives.

If you have any questions about the information provided here, please call on me. Thanking you for allowing the office of the City Attorney to be of service, I am

Respectfully yours,



Vanessa T. Valldejuli
City Attorney

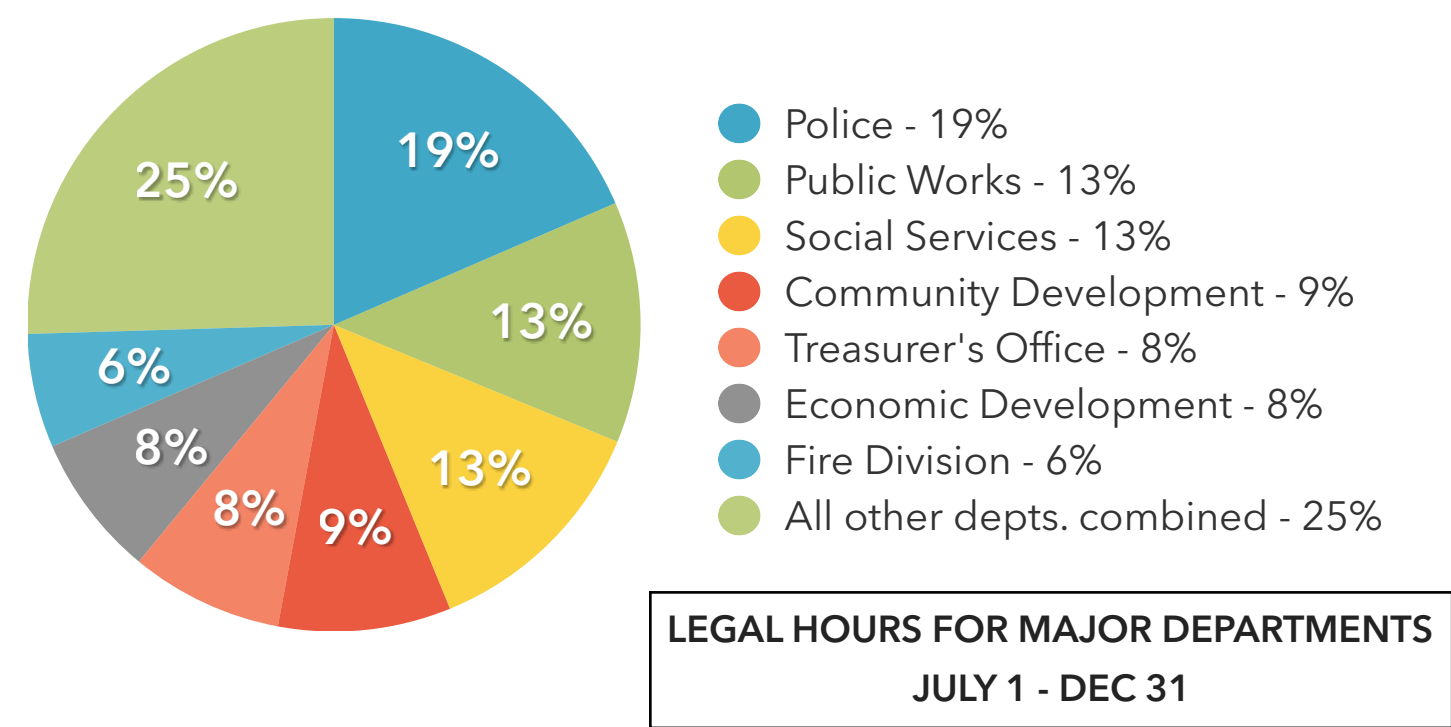
Attachment

cc: Mary B. Bunting, City Manager
Katherine K. Glass, Clerk of Council

CITY ATTORNEY'S OFFICE | 2017 MID-YEAR REPORT

TEAM STRUCTURE

LITIGATION 👤👤👤👤👤 5 Attorneys	DEVELOPMENT & FINANCE 👤👤👤👤👤 4 Attorneys & City Attorney as chief counsel to EDA	SUPPORT STAFF 👤👤👤👤👤👤 5 Paralegals & 2 Legal Assistants
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DIRECT SERVICE HOURS - FISCAL MID-YEARS

	2015	2016	2017
Attorneys	4433.03	6,897.81	8,207.52
Paralegals	1349.35	1,701.47	3,072.70
TOTAL	5,782.38	8,599.28	11,280.22

*Does **not** include time billed to CAO for supervision by senior attorneys, professional development, training, or file/record management, only direct service hours

COST SAVINGS - OUTSIDE V. IN-HOUSE COUNSEL

Outside vs. In-House Counsel	COST TO CITY
@ Average Outside Counsel Rate (\$278.65./hr attorneys; \$80.00/hr paralegals)	\$2,532,841.45
@ Average CAO Salaried Rate* (\$61.55/hr attorneys; \$28.68/hr paralegals)	\$593,297.90
SAVINGS OVER 6 MONTHS	\$1,939,544

*Average rate based upon salaries plus 40% added for benefits

